

UNITED STATES DISTRICT COURT
District of New Mexico

UNITED STATES OF AMERICA
V.

Catarino Silva-Valerio

Judgment in a Criminal Case

(For Offenses Committed On or After November 1, 1987)

Case Number: 2:09CR02427-001JB

USM Number: **50156-051**

Defense Attorney: **Armando Torres, Appointed**

THE DEFENDANT:

- pleaded guilty to count(s) **Information**
- pleaded nolo contendere to count(s)
- after a plea of not guilty was found guilty on count(s)

The defendant is adjudicated guilty of these offenses:

<i>Title and Section Nature of Offense</i>	<i>Offense Ended</i>	<i>Count Number(s)</i>
8 U.S.C. Sec. Reentry of a Removed Alien, 8 U.S.C. Sec. 1326(b)(2) 1326(a)(1) and (2)	05/19/2009	

The defendant is sentenced as specified in pages 2 through **6** of this judgment. The sentence is imposed under the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count .
- Count dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

July 8, 2010

County of Residence

Date of Imposition of Judgment

/s/ James O. Browning

Signature of Judge

Honorable James O. Browning
United States District Judge

Name and Title of Judge

August 30, 2010

Date Signed

Defendant: **Catarino Silva-Valerio**
 Case Number: **2:09CR02427-001JB**

IMPRISONMENT

The defendant is committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **21 months**.

The Court recommends that Immigration and Customs Enforcement begin removal proceedings during service of sentence.

The Court incorporates its Memorandum Opinion and Order in *United States v. Silva-Valerio*, CR 09-2427 (D.N.M.), filed August 30, 2010 (Doc. 40). Silva-Valerio's offense level is 20 and his criminal history category is I, establishing a guideline imprisonment range of 33 to 41 months. The Court has considered the USPO's guideline calculations in the PSR and adopts those calculations as its own. Silva-Valerio requests a variance to a sentence of 18 months. The Court has carefully considered the guidelines and has considered other sentencing goals. Specifically, the Court has considered the guideline sentencing range established for the applicable category of offense committed by the applicable category of defendant. After careful consideration of the factors set forth in 18 U.S.C. § 3553(a), the Court finds that the punishment set forth in the guidelines is not appropriate for this offense. The Court is concerned about Silva-Valerio's criminal history, but after reviewing where he is now as a person compared to where he was fifteen years ago when he committed a violent crime, the Court believes that some variance is appropriate in these circumstances. Silva-Valerio received a 16-level enhancement for his fifteen-year-old crime-of-violence conviction. The Court believes, because of the age of the conviction, it is more appropriate to sentence Silva-Valerio as if the enhancement were a 12-level, rather than a 16-level one. Treating the enhancement as a 12-level one would provide a guideline sentencing range of 21 to 27 months. The Court finds that a sentence of 21 months is appropriate. Anything lower, such as the 18 months that Silva-Valerio requests, does not adequately reflect the seriousness of reentering the United States after a previous deportation following a crime of violence. The Court believes that 21 months adequately reflects the seriousness of the offense and promotes respect for the law. The sentence also provides a more just punishment than the guideline sentence, because it better takes into account the age of the crime of violence, and provides adequate deterrence, because, given Silva-Valerio's current age -- forty-one -- his risk of committing another violent crime has decreased. For such reasons, the sentence protects the public. In sum, a sentence of 21 months otherwise fully and effectively reflects each of the factors set forth in 18 U.S.C. § 3553(a). While the Court's task, as a district court, is not to arrive at a reasonable sentence -- it is to come up with one that reflects the factors in 18 U.S.C. § 3553(a), see *United States v. Martinez-Barragan*, 545 F.3d 894, 904-05 (10th Cir. 2008) ("A sentence is substantively reasonable when the length of the sentence reflects the gravity of the crime and the § 3553(a) factors as applied to the case.") -- this sentence is more reasonable than one within the guidelines. Finally, the Court believes a sentence of 21 months of incarceration is sufficient without being greater than necessary to comply with the purposes of punishment set forth in the Sentencing Reform Act.

The court makes these recommendations to the Bureau of Prisons:

Lompoc Federal Correctional Institution, Lompoc, California, if eligible

The defendant is remanded to the custody of the United States Marshal.
 The defendant must surrender to the United States Marshal for this district:
 at on
 as notified by the United States Marshal.
 The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on
 as notified by the United States Marshal
 as notified by the Probation or Pretrial Service Office.

RETURN

I have executed this judgment by:

Defendant delivered on _____ to
_____ at _____ with a Certified copy of this judgment.

UNITED STATES MARSHAL

Deputy United States Marshal

Defendant: **Catarino Silva-Valerio**
 Case Number: **2:09CR02427-001JB**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years unsupervised**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. The defendant shall not commit another federal, state, or local crime. The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

- The above drug testing condition is suspended based on the courts determination that the defendant possesses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any dangerous weapon. (Check, if applicable).
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable).
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall obtain and maintain full time, legitimate employment, or attend a vocational or academic training program throughout the term of supervised release as directed by the probation officer;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;

Defendant: **Catarino Silva-Valerio**
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SPECIAL CONDITIONS OF SUPERVISION

The defendant must not reenter the United States without legal authorization.

Defendant: **Catarino Silva-Valerio**
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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments.

The Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

Totals:

Assessment	Fine	Restitution
\$waived	\$0.00	\$0.00

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

A In full immediately; or

B \$ immediately, balance due (see special instructions regarding payment of criminal monetary penalties).

Special instructions regarding the payment of criminal monetary penalties:Criminal monetary penalties are to be made payable by cashier's check, bank or postal money order to the U.S. District Court Clerk, 333 Lomas Blvd. NW, Albuquerque, New Mexico 87102 unless otherwise noted by the court. Payments must include defendant's name, current address, case number and type of payment.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.